Supreme Court, U.S.
FILED
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No.

In The

Supreme Court of the United States

In Re the Matter of

MATTHEW J. SISLER,
an Attorney at Law.

On Petition for Writ of Certiorari
to the Montana State Supreme Court

PETITION FOR WRIT OF CERTIORARI

Matthew James Sisler, Pro Se
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QUESTIONS PRESENTED FOR REVIEW

I. Does the United States Constitution, under the Due Process Clause of the 14th Amendment (as recognized in In Re Ruffalo, 390 U.S. 544 (1968)), prohibit the Montana Supreme Court from suspending indefinitely the license of an attorney, when:

1. The Court allowed its Commission on Practice to use two different sets of disciplinary rules;
2. The Court's Commission suppressed, misplaced and concealed evidence relating to its disciplinary proceedings; it did not provide the attorney with adequate time to prepare for trial; and it refused to allow the attorney access to relevant and material discovery;
3. The Court's rules authorized it to conduct *ex parte* communications with its Commission on Practice, without informing the attorney;
4. The Court permitted its biased Commission member to preside over disciplinary proceedings against the attorney, and the attorney was given no opportunity to challenge the member's participation; and
5. The Court's only grounds for disciplining the attorney were the interpretation of the Court's vague August 9, 2001, Order, suspending attorney "commencing on [Friday] September 7, 2001" and the attorney's "past experiences"

II. Does the Due Process or Equal Protection Clause prohibit the Montana Supreme Court from issuing its severe penalty against the attorney based only upon the attorney's mis-interpretation of the vague order suspending petitioner, while the attorney was under an undisputed cognitive impairment?

PARTIES TO THE PROCEEDINGS

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BASIS FOR JURISDICTION

The Montana Supreme Court's Commission on Practice entered its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court on December 16, 2003. The Montana Supreme Court entered its Order indefinitely suspending attorney Matthew J. Sisler on March 24, 2004. See Order, Montana Supreme Court Cause No. 02-739. It is from this Order that attorney and petitioner Sisler petitions this Court.

This Court has jurisdiction pursuant to 28 U.S.C. Section 1257 in conjunction with United States Supreme Court Rule 13(1) & (3), to review the Montana Supreme Court's imposition of discipline and denial of petitioner's motion for production; application for new trial; motion to dismiss or stay proceedings; and application to amend the Montana Supreme Court's disciplinary rules.

CONSTITUTIONAL PROVISIONS & COURT RULES

5TH Amendment, U.S. Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case without due process of law; nor shall private property be taken for public use, without just compensation.

14th Amendment, U.S. Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are

citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On August 9, 2001, the Montana Supreme Court issued its Order suspending the license of attorney and petitioner Sisler, "commencing on September 7, 2001." See Order dated September 7, 2001, Cause No. 01-557. See page 3, Respondent's Objections filed January 23, 2004, in Montana Supreme Court Cause No. 02-739 (hereinafter R3). On August 27, 2001, Sisler was involved in a touring bicycle accident, and suffered a moderate concussion. R4. Sisler suffered memory loss and difficulty with concentration. R5-8. Sisler thereafter understood that the Court's August 9, 2001, Order would require Sisler to complete his legal work at the conclusion of Friday, September 7, 2001, as opposed to the beginning of Friday, September 7, 2001. R7. Sisler closed his office and served previously-completed legal work on that day. Id.

The Court, through its Commission on Practice, filed its complaint against Sisler in Cause No. 02-739, on November 26, 2002, alleging that Sisler engaged in the practice of law by mailing items on on Friday, September 7, 2001. During the proceedings the Court changed its Rules for Lawyer Disciplinary Enforcement and allowed its Commission to prosecute Sisler using different provisions from two different sets of disciplinary rules without affording Sisler notice of which rules were in effect. See Section XI, Montana Supreme Court Operating Rules Application, filed March 1, 2004 (Cause No. 02-739). The Court's Commission also combined the investigatory,

prosecutory and adjudicatory functions into one entity, itself. The Commission refused to allow Sisler access to its public records prior to July 3, 2003, just prior to the Commission's trial against Sisler in this cause. Montana Supreme Court Order, In the Matter Establishing Procedures and Costs for Photocopying File Materials of the Commission on Practice, dated July 3, 2003. The Commission failed to keep record of the content of its files against Sisler, failed to keep the file content intact (losing over 21 documents), and failed to produce the file. See Application for New Trial and Motion to Dismiss or Stay, filed March 1, 2004 ("Application for New Trial"). The Court denied Sisler's motion to compel the Court's Commission to produce its entire file. See Motion for Court Order regarding the production of the Commission's file, filed February 20, 2004, and Order denying motion, filed March 24, 2004. The Court and Commission prohibited Sisler from conducting an interview with the Commission's investigator and the Commission refused to enter or follow any type of scheduling order in the cause, instead forcing Sisler to trial during a time when discovery was ongoing. See Application for New Trial, filed March 1, 2004. The Court's Rules for Lawyer Disciplinary Enforcement permitted the Commission's members to engage in *ex parte* communications with its prosecutor, special counsel and investigator, and the Court specifically authorized the Commission periodically to engage in *ex parte* communications with the Court, excluding the attorney involved. See Motion for Court Order Regarding Production of Commission File, filed on February 20, 2004. Despite Sisler's requests to obtain information about the *ex parte* communications, the Court has not required its Commission to produce the information, and it remains concealed.

During the proceedings below the Court delegated its disciplinary authority to its Commission. The Commission was comprised of members including Bruce Fredrickson, an

attorney in the State of Montana. Fredrickson held bias against Sisler, yet neither the Court nor the Commission required Fredrickson to recuse himself from the proceedings against Sisler. See Supplemental Brief in Support of Application for New Trial, filed March 23, 2004. The Court nonetheless denied Sisler's application for a new trial in its March 24, 2004. There is no Montana Supreme Court rule or policy which allows attorneys being prosecuted by the Commission, to object to any Commission member's participation in the disciplinary proceedings. Likewise, there is no rule or policy requiring that Commission members with conflicts of interest recuse themselves from disciplinary proceedings.

The Court's only bases for indefinitely suspending Sisler's license to practice law, for not less than three years, were Sisler's interpretation of the Court's vague August 9, 2001, Order and Sisler's "past experiences" with the Commission. See Findings of Fact, Conclusions of Law and Order, dated December 3, 2003, included in the Appendix, and Order, filed March 24, 2004, included in the Appendix. The "past experiences" term was not defined, despite Sisler's objection. See Respondent's Objections to Findings of Fact, Conclusions of Law and Recommendation, dated January 22, 2004. There was no notice to Sisler that "past experiences" would be considered as aggravating factors in the imposition of discipline, and the Commission and Court failed to include any discussion about which relevant mental state would be considered in their deliberations, as well. See Section XI, Montana Supreme Court Internal Operationg Rules Application, filed March 1, 2004, and Application for New Trial, Motion to Dismiss or Stay, and Supplemental Brief, filed March 1 and 23, 2004. By entry of its two page order on March 24, 2004, the Court below passed on all of the issues raised by Sisler and adopted, in their entirety without change, the proposed Findings of Fact and Conclusions of Law recommended by the Commission.

ARGUMENT

In accord with Rule 10(b) and Rule 14(h), Rules of the Supreme Court of the United States, Petitioner Sisler alleges as follows:

The manner in which the Montana Supreme Court and its Commission on Practice conducted discipinary proceedings against Petitioner Sisler is in conflict with relevant decisions of this United States Supreme Court. See In Re Ruffalo, 290 U.S. 544, 552 (1968) (attorneys are entitled to Due Process in disciplinary proceedings); see also Mayberry v. Pennsylvania, 400 U.S. 455, 469 (1971) (due process adjudged on basis of appearance or risk that potential harm or prejudice may occur due to inherent flaw in process); Commonwealth Coatings Corp. V. Continental Casualty Co., 393 U.S. 145, 150 (1968) (tribunals must avoid even the appearance of bias). Further, the manner in which the Montana Supreme Court and its Commission on Practice conducted disciplinary proceedings against Petitioner Sisler raise questions which have not been, but should be, settled by this Court. The questions include whether the Due Process Clause prohibits the Court below from changing procedural rules without notifying the attorney; prohibits the Court and Commission to suppress, lose and conceal material evidence; prohibits the Court and Commission from conducting *ex parte* communications during disciplinary proceedings; prohibits the Court and Commission from authorizing a biased Commission member to deliberate over the discipline given to the attorney; and prohibits the Court from entering a severe penalty against the attorney when the attorney only had interpreted the Court's August 9, 2001, order stating that "commencing on September 7, 2001" to include that date, after the attorney suffered a moderate concussion and cognitive sequela attendant to that undisputed injury.

The specific facts show that Petitioner Sisler was denied his right to an impartial tribunal. The combination of the Court's investigatory, prosecutory and adjudicatory roles, and the harsh penalty given without proper basis or explanation, resulted in patent, unconstitutional unfairness.

APPENDIX

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1.	Montana Supreme Court Cause No. 02-739 Order, filed March 24, 2004.	-b-
2.	Montana Supreme Court Cause No. 02-739 Findings of Fact, Conclusions of Law and Recommendation, filed December 16, 2003.	-d-

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. 02-739

IN THE MATTER OF	)	
MATTHEW J. SISLER,	)	ORDER
	)	
An Attorney at Law,	)	
	)	
Respondent.	)	

The Commission on Practice of the Supreme Court of the State of Montana filed its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court on December 16, 2003. On January 22, 2004, Respondent Matthew J. Sisler filed his objections to those findings, conclusions and recommendations and brief in support, and Special Counsel filed his response thereto on January 30, 2004. Thereafter, on February 4, 2004, this Court granted Respondent's motion for leave to file an appendix herein, which appendix was filed on February 20, 2004, together with a "Motion for Court Order Regarding Production of Commission File and Brief in Support of Motion." Respondent has since filed an application for a new trial, motion to dismiss or stay and application to amend the Rules for Lawyer Disciplinary Enforcement.

The Court has reviewed the Findings of Fact, Conclusions of Law and Recommendations of the Commission on Practice, the objections thereto filed by Respondent an the response to the objections filed by Special Counsel. We conclude that the Findings of Fact, Conclusions of Law and Recommendations of the Commission are supported by the record and are hereby adopted by this Court in their entirety. Therefore,

IT IS ORDERED:

1. Respondent's motion to dismiss or stay the proceedings is denied.
2. Respondent's motion for a new trial is denied.
3. Respondent's motion to amend the Rules for Lawyer Disciplinary Enforcement is denied.

4. Matthew J. Sisler is hereby suspended indefinitely from the practice of law in the State of Montana for a term not less than three years from the date of this order.

5. Matthew J. Sisler is ordered to pay the costs of these proceedings, the amount of which will be set in a forthcoming letter from the Secretary for the Commission on Practice. Sisler shall have ten days after the service of the Secretary's statement of costs in which to file written objections, and if so desired, request a hearing before the Commission on whether the amount of such costs are reasonable and necessary. The Commission shall thereafter recommend an amount of costs to be imposed, and shall file its recommendation, along with any objections thereto, with this Court, which shall then issue an appropriate order assessing costs. Rule 7, R.L.D.E.

6. The Clerk of this Court shall serve a copy of this Order upon Matthew J. Sisler by certified mail, return receipt requested, and shall mail copies hereof by ordinary mail to Special Counsel Dana L. Christensen, and to the Chairman and Secretary of the Commission on Practice. The Clerk is further ordered to mail copies of this Order to the District Courts of the State of Montana, to the Clerk of the Federal District Court of the District of Montana, to the Clerk of the Circuit Court of Appeals of the Ninth Circuit, and to the Executive Director of the State Bar of Montana.

DATED this 23rd day of March, 2004.

/s/ Karla M. Gray, Chief Justice
W. William Leaphart
Larry Nelson
Jim Regnier
John Warner
Jim Rice

BEFORE THE COMMISSION ON PRACTICE OF THE SUPREME COURT OF THE STATE OF MONTANA

IN THE MATTER OF MATTHEW J. SISLER,	)	Supreme Court No. 02-739
	)	COP File No. 01-4460/01-4467
An Attorney at Law,	)	
Respondent.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW
and
RECOMMENDATIONS TO THE SUPREME COURT

The Complaint against Respondent, Matthew J. Sisler, an attorney licensed to practice law in the State of Montana, who is currently suspended indefinitely from the practice of law in the State of Montana, came on for hearing on Friday, July 11, 2003, at 9:00 a.m. Respondent appeared pro se, and was not represented by counsel. Dana L. Christensen of Kalispell was present representing and acting as Special Counsel. Members of the Commission who were present at the hearing and who participated in this decision were Chairman, John Warren, Vice Chairman, Gary Davis, Mr. Bruce A. Fredrickson, Ms. Patricia DeVries, Ms. Sue Bartlett, Mr. Stephen R. Brown, Mr. James A. Hubble, Mr. Thomas W. Hughes, Mr. James F. Jacobsen, Mr. Michael F. Lamb, Ms. Mary Jo Ridgeway, and Mr. Milton Wordal. Commission members Ms. Carey Matovich and Mr. Art Noonan were not present and did not participate in this decision. Testimony and documentary evidence were presented at the time of the hearing. Based on clear and convincing evidence presented at the time of the hearing, and after considering the subsequent arguments and Proposed Findings of Fact and Conclusions of Law presented by Respondent and Special Counsel, the Commission hereby enters the

following:

FINDINGS OF FACT:

1. Respondent is an attorney duly licensed to practice law in the State of Montana, and is a member of the State Bar of Montana and is and was, therefore, obligated to conform to the Rules of Professional Conduct and the Rules for Lawyer Disciplinary Enforcement, as adopted by the Supreme Court of the State of Montana.

2. On November 26, 2002, a formal Complaint was filed in the above matter on behalf of the Commission by Special Counsel, Dana L. Christensen, after his investigation and report to the Commission regarding the matters involved in the Complaint.

3. The Complaint alleges that Respondent engaged in the practice of law, while suspended by the Montana Supreme Court, in violation of Rule 6(5) of the Montana Rules for Lawyer Disciplinary Enforcement [now Rule 8.A.(5), MRLDE (2002)], and further violated the Disciplinary Orders of the Montana Supreme Court. Specifically, on August 9, 2001, the Montana Supreme Court entered an Order providing, in part, that "[C]ommencing on September 7, 2001, Respondent Matthew J. Sisler is suspended indefinitely from the practice of law in the State of Montana for a period of not less than three months." Pursuant to an Opinion and Order dated September 14, 2001, Missoula County District Court Judge John S. Henson found that six documents and pleadings were filed by Respondent on September 10, 2001, on behalf of his client, with the Missoula County Clerk of Court in Cause No. DV 01-261. All of these documents were signed and dated by Respondent on September 7, 2001, the date his suspension commenced. Furthermore, pursuant to an "Order striking the pleadings filed by Matthew J. Sisler," dated September 11, 2001, Missoula County District Court Judge John W. Larson found that three documents and pleadings were filed by Respondent, on behalf of his client, with the Missoula County Clerk of Court in Cause No. DV 01-52, on September 10, 2001. All of these documents were also signed and dated by Respondent on September 7, 2001, the date his suspension commenced.

4. Judges Henson and Larson both testified that the pleadings filed by Respondent in these two matters were substantive in nature, requiring

responses from the opposing parties. The pleadings filed in Judge Henson's court that were subsequently stricken pursuant to his September 14, 2001, Opinion and Order were as follows: 1) motion for leave to amend complaint; 2) motion for partial summary judgment and accompanying memorandum; 3) verification of plaintiff's attorney's fees and costs related to second motion to compel discovery; and 4) video deposition. Tr. pp. 27-28. The pleadings filed in Judge Larson's court that were subsequently stricken pursuant to his September 11, 2001, Opinion and Order Striking Pleadings Filed by Matthew J. Sisler were as follows: 1) Motion for Hearing on Damages and Memorandum in Support of Motion; 2) Motion for Summary Judgment and Memorandum in Support of Motion; and 3) Praecipe. Tr. pp. 34-35. The filing of these pleadings, which included motions for summary judgment and partial summary judgment, also triggered immediate action by the clerk's office and the judges, in that such motions require the setting of hearings.

5. Based on the Montana Supreme Court's Order of August 9, 2001, suspending Mr. Sisler from the practice of law in the state of Montana, "commencing on September 7, 2001," Judges Henson and Larson struck the aforementioned pleadings from their respective files, and directed the Missoula County Clerk of Court to return the same to Mr. Sisler. Tr. pp. 30-35.

6. The Montana Supreme Court's Order of August 9, 2001, was clear and unambiguous in its meaning, as established by the testimony of Judges Henson and Larson, and Respondent's own expert, Great Falls attorney Robert J. Emmons; that is, Respondent's suspension commenced at 12:01 a.m. on September 7, 2001. Tr. pp. 26, 34, 59.

7. Accordingly, Respondent had 28 days from and after the Supreme Court's Order of August 9, 2001, [excluding August 9 and September 7, 2001] in which to complete pending legal matters, notify his clients of his suspension, and wrap-up his practice.

8. Respondent's expert witness, attorney Robert J. Emmons, characterized Mr. Sisler's actions of signing and mailing the stricken pleadings for filing on September 7, 2001, as nothing more than a "ministerial act." Tr. p. 48. Mr. Emmons nevertheless acknowledges

that "when he signed the pleadings, the motions and the briefs, in my opinion, he would be acting as a lawyer when he was suspended. . . ." Tr. p. 49. The Commission has given due consideration to Mr. Emmons' testimony and opinions and is not persuaded. Mr. Sisler's actions were actions taken in his capacity as a lawyer while suspended and were specifically designed to elicit action both by the Courts and by the opposing parties during the course of Mr. Sisler's suspension. His actions were taken knowing full-well that neither the opposing parties nor the court would receive the documents until at least Monday, September 10, 2001. Mr. Emmons testified that because the courts "got on these immediately" there was no harm caused because none of the opposing parties had to do anything. Tr. pp. 57-58. Mr. Emmons' testimony misses the point - that is, Mr. Sisler acted as a lawyer while suspended. His actions were clearly intended to elicit action by both the courts and opposing counsel during the course of his suspension. His actions required both courts to respond by striking pleadings. The fact that both judges acted promptly is not a factor mitigating Mr. Sisler's actions at any level.

9. Respondent suffered a bicycle accident on August 27, 2001, approximately 18 days following the Supreme Court's order of August 9, 2001, for which he sought medical care at the Community Medical Center Emergency Department in Missoula. He was treated by ER physician, Dr. Scott Greer. According to Dr. Greer's records dictated Emergency Room Report, and his telephonic testimony at the hearing, the Respondent did not suffer any cuts, bleeding, or abrasions as a result of the accident. The neck x-ray and CT Scan were read as normal, ruling out neck fracture and hematoma or bleeding on the brain. The Respondent's discharge diagnosis on that date was traumatic brain injury. He was instructed to follow up that week with Dr. Johnathan Stone. However, the Respondent did not seek follow up care with Dr. Stone the following week as instructed and recommended by Dr. Greer, and in fact, did not treat with Dr. Stone until October 22, 2001, approximately six weeks after his suspension commenced, approximately four weeks after he had been advised by the Commission on Practice of the Complaints that had been filed by Judges Henson and larson. Dr. Stone recommended to

Respondent that he have specific follow up care, including evaluation by a speech thereapist, which Respondent has not done. See generally, Tr. pp. 113-124; Respondent's Exhibit A.

10. During the interval period of time from the bicycle accident on August 27, and up to and including the date his suspension commenced on September 7, 2001, the Respondent engaged in a number of activities requiring functional mental capacity, including the preparation of legal pleadings, the wrapping up of his legal practice, and the closing of his law office, which included the sorting, organizing an boxing of documents. Tr. pp. 96-97; 105-106; 126-131.

11. To the extent that the foregoing Findings of Fact are in reality Conclusions of Law, they should be so construed.

From the foregoing Findings of Fact, the Commission hereby enters the following:

CONCLUSIONS OF LAW

1. The Montana Supreme Court's Order of August 9, 2001, was clear and unambiguous in its meaning; that is, Respondent's suspension commenced at 12:01 a.m. on September 7, 2001.

2. The signing and dating of numerous pleadings by Respondent in Missoula County District Court Cause Nos. DV 01-52 and DV 01-261 on September 7, 2001, and the mailing for filing of these same pleadings on September 7, 2001, which resulted in their docketing with the Missoula County Clerk of Court's Office on September 10, 2001, constitutes the practice of law by Respondent as defined by Section 37-61-201, MCA, as confirmed by the sworn testimony of Respondent's own expert, Robert J. Emmons.

3. Respondent's defense of mental disability or impairment as a result of the August 27, 2001, bicycle accident is a matter that can only be considered by the Commission as a factor in determining the discipline to be recommended or imposed, as provided in Rule 9.B.(2), RLDE (2002). In any event, the Commission finds that there is clear and convincing evidence that the injuries suffered by Respondent as a result of the August 27, 2001, bicycle accident were not of sufficient duration or nature so as to affect his ability to understand the meaning and intent of the Supreme Court's Order on August 9, 2001. In other words, the Commission finds that there is no

excuse for Respondent's failure to follow the clear and unambigous requirements of the Supreme Court's Order of August 9, 2001. If Respondent believed that the August 9, 2001, Order was ambiguous or unclear to him, then he should have sought clarification of its meaning, which he did not do.

4. Therefore, the Commission finds that there is clear and convincing evidence that Respondent engaged in the practice of law as defined by Montana law after his suspension had commenced, constituting a violation of Rule 6(5) of the Commission on Practice Rules for Lawyer Disciplinary Enforcement [now Rule 8.A.(5), MRLDE (2002)] and further, that Respondent violated the June 19, 2001, and August 9, 2001, Disciplinary Orders of the Montana Supreme Court.

RECOMMENDATION

Respondent Sisler is not a new face to the Commission. He is not, or at least should not be, unfamiliar with the Montana Rules of Professional Responsibility and the Montana Rules for Lawyer Disciplinary Enforcement. Mr. Sisler's past experiences with the Commission were considered as aggravating factors in arriving at this recommendation. The Commission considered all of the evidence and the testimony presented in this matter and expressly and unamimously found Mr. Sisler's excuses and explanations for his actions that led to the complaints less than compelling.

For all of the reasons stated herein it is the unanimous recommendation of all members of the Commission who participated in these proceedings that Respndent, Matthew J. Sisler, be suspended indefinitely from the practice of alw in the State of Montana for a term of not less than three (3) years. It is further the unanimous recommendation of the Commission that the Respondent, Matthew J. Sisler, be assessed all costs associated with these proceedings.

DATED this 12th day of December, 2003.

Commission on Practice
/s/ John Warren
For the Commission on ractice
[sic]

CERTIFICATE OF MAILING

I, Sharon B. Parrish, Administrative Officer of the Commission on Practice of the Supreme Court of the State of Montana, hereby certify that tyhe foregoing Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court was duly served by US Mail on December 16, 2003, upon the following:

Dana L. Christensen, Esq.
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Matthew J. Sisler, Esq.
Respondent
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Missoula, MT 59806-1644

DATED this 16th day of December,. 2003

/s/ Sharon B. Parrish
Sharon B. Parrish, Admin. Officer
COMMISSION ON PRACTICE